



# California Fair Political Practices Commission

March 29, 1989

Daniel Whelihan  
City of Santee  
10765 Woodside Avenue  
Santee, CA 92701-3198

Re: Your Request for Advice  
Our File No. I-89-063

Dear Mr. Whelihan:

This is in response to your request for advice regarding the responsibilities of the City of Santee pursuant to Section 89001, the mass mailings provision, of the Political Reform Act (the "Act").<sup>1</sup> Because you have not asked a question about a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2</sup>

## QUESTIONS

The City of Santee publishes a newsletter entitled "City of Santee Report" (the "Santee Report").

1. Is inclusion of the photographs of the mayor and the city council in the Santee Report prohibited by Section 89001?

2. Is inclusion of the names of the councilmembers in the section of the Santee Report entitled "Council Highlights" prohibited by Section 89001?

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c) (3).)

### CONCLUSIONS

1. Inclusion of the photographs of the mayor and the city council in the Santee Report is prohibited by Section 89001.
2. Inclusion of the councilmembers' names in the section entitled "Council Highlights" is prohibited by Section 89001 if the newsletter is prepared or sent in cooperation, consultation, coordination or concert with the councilmembers. If not, the Santee Report may include the names of councilmembers and still be sent at public expense if the councilmembers are not "featured" in the document.

### FACTS

The Santee Report is published by the Department of Human Services of the city. The department head is appointed by the city manager. The Santee Report includes a section entitled "Council Highlights" (the "highlights"). It is a report of major actions of the city council and may include the names of the councilmembers.

### ANALYSIS<sup>3</sup>

Section 89001 states:

No newsletter or other mass mailing shall be sent at public expense.

Section 82041.5 defines a mass mailing as:

[O]ver two hundred substantially similar pieces of mail . . . .

The Commission adopted Regulation 18901 to clarify that the purpose of Section 89001 is to prevent elected officers from using public funds to send out newsletters and other mass mailings.

1. Inclusion of the photographs of the mayor and the councilmembers in the Santee Report.

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<sup>3</sup> This analysis assumes that the Santee Report is sent at public expense to over 200 persons in any calendar month.

Subdivision (c)(2) of Regulation 18901 states that if an elected officer is "affiliated"<sup>4</sup> with an agency the agency may not "feature"<sup>5</sup> the elected officer in any newsletter distributed by the agency. The mayor and councilmembers are "affiliated" with the City of Santee. (Regulation 18901(c)(2)(C).) Therefore they may not be "featured" in the Santee Report by use of their signature, photographs, or the manner of display of their names or offices in the layout of the newsletter such as by headlines, type size, or typeface. (Regulation 18901(c)(2)(B).) Accordingly, inclusion of their photographs in the Santee Report does violate Section 89001.

2. Inclusion of the names of the councilmembers in the section entitled "Council Highlights".

As noted above, the councilmembers are "affiliated" with the city. (Regulation 18901(c)(2)(C).) Thus, they may not be "featured" in any newsletter distributed by the city. (Regulation 18901(c)(2)(A)(i).) Further, if the newsletter is prepared or sent in cooperation, consultation, coordination or concert with a councilmember, the newsletter may not include his or her name, office, or make any other reference to the councilmember. (Regulation 18901(c)(2)(A)(ii).) Review of the newsletter by the councilmember would be sufficient for the newsletter to have been "prepared or sent in cooperation, consultation, coordination or concert" with the councilmember. In that event, the newsletter may not contain the name, office or make any other reference to the councilmember. Accordingly, reporting a councilmember's name or office, or any other reference to the elected officer is prohibited by Section 89001 if the newsletter is prepared or sent in cooperation, consultation, coordination or concert with the councilmember.

If the newsletter is not prepared or sent in cooperation, consultation, coordination, or concert with the councilmembers, their names or offices may be mentioned provided they are not "featured" in the newsletter. (Regulation 18901(c)(2)(A)(i).) In that event, the Santee Report may not single out a councilmember

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<sup>4</sup> An elected officer is "affiliated" with an agency if he or she is a member, officer, or employee of the agency or a subunit such as a committee, or has supervisory control over the agency, or appoints one or more members of the agency. (Regulation 18901(c)(2)(C).)

<sup>5</sup> An elected officer is "featured" in a mass mailing if he or she is singled out for attention of the reader by use of his or signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface. (Regulation 18901(c)(2)(B).)

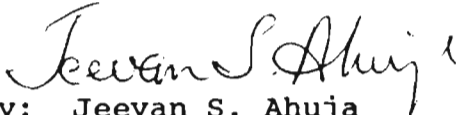
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for the attention of the reader by the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface.

I trust this letter provides you with the guidance you have requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Jeevan S. Ahuja  
Counsel, Legal Division

City Manager  
Ronald E. Ballard



FR 30

# CITY OF SANTEE

JAN 30 4 38 PM '89

Mayor  
Jack Doble  
City Council  
Jim Battell  
Mike Clark  
Jack E. Dale  
Roy A. Woodward

January 24, 1989

State of California  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

To whom it may concern:

The Political Reform Act of 1974 as amended by Proposition 73 requires new restrictions on mass mailings conducted by public entities. The City of Santee being such an entity has found some of the restrictions to be somewhat ambiguous in interpretation and would like to request some clarification on the part of your legal department.

Enclosed you will find two copies of the City of Santee Report. There are two areas of concern we wish to clarify. The formal edition of the report (Vol. 6 NO.1) has the pictures of the mayor and city council members in the lower left hand corner of the back page of the report. Concern that this may be in violation of the new laws concerning mass mailing has caused the removal of the pictures from current and future editions of the report.

Does the fact that the city publishes the report make it illegal for the pictures to be in the report itself?

One other item of concern is the section of the report entitled "Council Highlights". The council members are not affiliated with the preparation of the document yet they are mentioned by name in the section for various reasons along with most major actions of the city council during the covered period in the Report.

Is it legal to continue with the sectional title of "Council Highlights" and continue to mention the names of council members when referring to elections and affiliations with actions of concern to citizens who read the Report?

Both areas of concern are highlighted in the copies of the Report sent along with this letter.

January 24, 1989  
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Your cooperation in clarifying these areas of uncertainty would be greatly appreciated. It is sometimes difficult to determine the far reaching implications of new ordinances and laws which directly relate to our city.

Thank you for your time and effort on this matter.

Sincerely,

A handwritten signature in cursive script, reading "Daniel Whelihan". The signature is fluid and extends to the right with a long, sweeping tail.

Daniel Whelihan, Intern  
Human Services Department